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Situation of human rights in Cambodia

Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Peter Leuprecht, submitted in accordance with resolution 2001/82

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Executive summary

This report is submitted in accordance with resolution 2001/82 of the Commission on Human Rights and is based on the fourth visit to Cambodia of the Special Representative of the Secretary-General for Human Rights, which was carried out from 18 to 28 November 2001. During this visit the Special Representative met with various government officials and representatives of non-governmental organizations and the diplomatic and donor communities.

The fourth visit of the Special Representative focused on two main issues: the upcoming Commune Council elections and judicial reform. The issue of the right to education was also examined preliminarily, with a view to exploring this complex issue more fully on the occasion of the next visit. He also followed up on issues raised in his report to the fifty-sixth session of the General Assembly.

The Commune Council elections scheduled for 3 February 2002 represent an important opportunity for Cambodians for the popular election of leadership at the local commune level, and are a significant step toward democratization and decentralization in Cambodia. A peaceful and transparent electoral process will be a useful indicator of the level of preparedness for the National Assembly elections planned for 2003. In general, the Special Representative has a favourable impression of the preparations for the Commune Council elections. Eighty-three per cent of eligible voters have registered, although some voters who wished to register were unable to do so. Irregularities with regard to the registration of candidates have been addressed by the relevant election officials. The Special Representative wishes to draw attention to the penal provisions of the Election Law designed to address irregularities in the election process; he advocates the effective implementation of these provisions in the future.

The Special Representative welcomes assurances from the Government that political violence will not be tolerated and, in particular, the Prime Minister's commitment to reiterate his earlier statements against politically related violence in advance of the elections. Also welcome is the directive of the Ministry of the Interior to local officials to investigate and prevent any incidents of election-related violence, threats or intimidation. In relation to the issue of political intimidation, the Special Representative visited the former Khmer Rouge stronghold of Koh Sla in Kampot Province, where a number of cases of intimidation had been reported. The Special Representative commends the Provincial Election Committee in Kampot Province for its effective work in this particularly difficult region. The Special Representative was encouraged that a meeting of former Khmer Rouge commune officials, Elections Committee officials and members of all political parties took place in a frank and constructive spirit.

The Special Representative reiterates the urgent need for reform of Cambodia's judiciary and welcomes the Prime Minister's assurance that judicial reform remains a high priority for the Government. Concrete signs of the Government's commitment would be most welcome by the Special Representative and the international community, including in particular: the passing of the Statute of Judges; the opening up of access to the Bar and the judiciary for trained law graduates; the increase of judges' salaries; and increased budget allocations to the judicial sector. The Special Representative also appeals to donors to continue their generous support of judicial reform and, moreover, to improve coordination between them.

The Special Representative began his investigation into the situation of education in Cambodia on this fourth visit. In particular, he inquired about quality and access, especially in relation to traditionally marginalized groups such as girls, ethnic minorities, indigenous peoples, the disabled, inhabitants of remote areas and the poor. The Special Representative will explore this issue more deeply on the occasion of his fifth visit in the spring of 2002.

The Special Representative discussed the memorandum of understanding between the Government and the Office of the High Commissioner for Human Rights (OHCHR) with the Minister for Foreign Affairs. An agreement was reached on the text and on the one outstanding provision concerning the freedom of expression of participants in OHCHR/Cambodia programmes and meetings. However, at the time of writing it had unfortunately still not been signed.

This report was completed on 17 December 2001.

Introduction

1. The present report is submitted in accordance with resolution 2001/82 of the Commission on Human Rights. This is the Special Representative's second report to the Commission. Following the Special Representative's second and third visits to Cambodia, a report was drafted in July 2001 and submitted to the fifty-sixth session of the General Assembly in November 2001 (A/56/209). On 19 December 2001, the General Assembly adopted resolution 56/169 on the situation of human rights in Cambodia.

2. On 25 April 2001, the Commission on Human Rights adopted resolution 2001/82 on the situation of human rights in Cambodia. In that resolution, the Commission requested the Secretary-General, through his Special Representative for human rights in Cambodia, to assist the Government of Cambodia in ensuring the protection of the human rights of all people in Cambodia.

3. This report builds upon the Special Representative's earlier reports to the Commission on Human Rights and the General Assembly. The Special Representative will, in general, attempt to avoid repeating what he has stated in previous reports. His approach and methodology remain the same, as described in previous reports.

I. THE SPECIAL REPRESENTATIVE'S ACTIVITIES AND SOURCES

4. The Special Representative carried out his fourth visit to Cambodia from 18 to 28 November 2001. The visit focused on two main themes: communal elections and judicial reform. Preliminary examination of the right to education also took place, with a view to conducting deeper investigation of the issue on his next visit. In addition, the Special Representative followed up on issues raised in preceding visits, including land, administration of justice and impunity.

5. During his fourth visit the Special Representative once again had an audience with the King of Cambodia, His Majesty Norodom Sihanouk. He also met with several senior officials, including the Prime Minister, the Minister for Foreign Affairs and International Cooperation, the newly appointed Minister of Justice, the Deputy Prime Minister and Co-Minister of the Interior, the Minister of Women's and Veterans' Affairs, the President of the Senate, and the President of the National Assembly.

6. In addition, the Special Representative met with the Chair, Vice-Chair and Secretary-General of the National Elections Committee (NEC), the President of the Supreme Court, the General Prosecutor of the Court of Appeal, the President of the Phnom Penh Municipal Court, members of the judiciary, the President of the Bar Association, the Bar Council, and representatives of various political parties. The Special Representative also consulted with leaders of civil society, members of the donor and diplomatic communities, including for the first time the Ambassador of China, as well as representatives of United Nations agencies. The Special Representative paid his second visit to the Law Faculty

and delivered a lecture to students on the occasion of the establishment of the Human Rights Chair at the Faculty of Law and Economics and the introduction of a new course, "International and national dimensions of human rights law and practice".

7. During his stay, the Special Representative carried out a visit to the Kampot Province, where he focused on preparations for the upcoming communal elections, and investigated cases of politically related violence and intimidation in the area. The Special Representative met with representatives of the provincial office of the Office of the High Commissioner for Human Rights in Cambodia (OHCHR/Cambodia), non-governmental organizations (NGOs) working in Kampot, the first and second deputy governors, the provincial police commissioner, the Chair of the Provincial Election Commission (PEC), the Chairs of the Commune Election Committees (CEC) for the communes of Ta Ken and Trapaing Plaing, and representatives of various political parties.

8. Following his fourth visit in Cambodia, the Special Representative spent a day in Tokyo at the invitation of the Government of Japan, Cambodia's largest single donor. While in Tokyo, the Special Representative met with various Japanese officials.

9. The Special Representative regrets the remarks made about him after his fourth visit by Prime Minister Hun Sen. He recalls that the mandate conferred upon him by the United Nations is to maintain contact with the Government and people of Cambodia; to guide and coordinate the United Nations human rights presence in Cambodia; and to assist the Government of Cambodia in the promotion and protection of human rights (Commission on Human Rights resolution 1993/6). In spite of progress made in certain areas, there is still much room for improvement of the human rights situation in Cambodia. The way forward is to address, seriously and honestly, the harsh realities that negatively affect the lives of Cambodians and their human rights, such as land-grabbing and forced expulsion. The Special Representative believes that progress will be achieved through frank and constructive dialogue between Cambodia and the international community, including the Special Representative. The Royal Government of Cambodia has a particular responsibility in this regard. The Special Representative has, in earlier reports, expressed his appreciation for the spirit of cooperation and openness shown by Cambodian authorities. He sincerely hopes that the same attitude will prevail in the future on the part of all Cambodian authorities.

II. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Communal elections scheduled for 3 February 2002

Preparations for the elections

10. In general, the Special Representative has a favourable impression of preparations for the Commune Council elections, which are scheduled for 3 February 2002. These elections will take place at the local level and will result in the replacement of current - and in some cases, long-standing - commune chiefs by popularly elected Commune Councils. The communal

elections represent an important step towards democratization and decentralization in Cambodia. A peaceful and transparent electoral process will serve as a useful indicator of the level of preparedness for general elections planned for 2003.

11. In terms of monitoring, international organizations are providing ongoing assistance to Cambodian Election Monitoring Organizations (EMOs); the European Union will provide some international election observers and long-term observers will arrive in December. The Special Representative welcomes and encourages further donor support in the area of election monitoring.

12. Eighty-three per cent of an estimated 6.2 million eligible voters have been registered for the communal elections. This figure is significantly lower than voter registration in the 1998 election. Lower registration may be related to the delay in the adoption by the NEC of election regulations, which in turn delayed voter education programmes, as well as to the shortage and late distribution of registration station materials.

13. Registration of candidates appears to have been relatively smooth. While there were some initial reports of difficulties encountered during candidate registration, all complaints have been, or are being, addressed at the CEC level, or through intervention at the PEC or NEC level. The participation of women as candidates is as follows: Sam Rainsy Party (SRP) 21 per cent, United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) 14.1 per cent and Cambodian People's Party (CPP) 13.3 per cent.

14. In terms of candidate registration, the Special Representative is concerned that in certain communes some parties were unable to field candidates because party members were too afraid to stand for election. In 14 of a total of 1,621 communes, only one party, the CPP, has fielded candidates.

15. The Special Representative is pleased that the NEC has supported voter education programmes in coordination with international and national NGOs.

16. While the Law on Communal Elections contains penal provisions under which election authorities may impose serious fines for the violation of election laws, many complaints have been resolved through conciliation. The penal provisions have so far not been applied. The Special Representative welcomes the instructions issued by the NEC to electoral commissions at all levels regarding complaints, hearing procedures, and punishments for violations of the Election Law. The NEC has also issued useful training materials on the same topic for NEC Legal Services officials.

17. The Special Representative welcomes as a positive development the NEC's assurance that equal access to public service electronic media will be allocated to parties for the purposes of campaigning. Access to broadcast media is perhaps the single most important means of levelling the playing field for all parties, particularly in Cambodia, where illiteracy remains high - especially in remote and rural areas - and where the current Government dominates ownership of broadcast media.

Pre-election violence and intimidation

18. It is obvious that any instances of violence or intimidation in a pre-election context will have a negative impact on the election climate. OHCHR/Cambodia is aware of the killing of seven candidates or prospective candidates and two political activists since January 2001; victims were members of either FUNCINPEC or the SRP. While OHCHR/Cambodia and Cambodian human rights groups have determined that several of those attacks were likely to have been political in nature, Cambodian officials have categorized them as personal, rather than political, disputes.

19. In the period from 1 June to 30 November 2001, OHCHR/Cambodia and local human rights organizations received 198 allegations of election-related instances of violence and intimidation. Of these, 93 have been confirmed, or are likely to be, as politically related. The majority of cases involved threats, harassment or intimidation, directed largely against members of the SRP and, to a lesser extent, FUNCINPEC; and have been committed by village and commune officials, including local police. About 40 per cent of reported cases have taken place in former Khmer Rouge areas. There is no evidence to support the existence of a centralized campaign of violence or intimidation. The Special Representative reiterates his statement of 2 August 2001, in which he stressed that all instances of violence in the election context must be seriously and independently investigated.

20. The Prime Minister made a commitment to repeat his earlier statements against political violence "15 times" before the February election. The Special Representative underscores the importance of the message of peaceful, free and fair elections, particularly from the Office of the Prime Minister.

21. The Special Representative welcomes the establishment on 3 August 2001 of the Central Security Office (CSO) for the Defence of the Commune/Sangkat Elections to deal specifically with election-related violence; the CSO is chaired by the Deputy Prime Minister and Co-Minister of the Interior. The Special Representative commends the CSO's 11 October 2001 directive ordering all local authorities and security forces to provide security to all persons participating in the election process, and to prevent and investigate instances of violence and intimidation. The directive also calls on all authorities to observe neutrality in their duties, and states that all parties have the right to put up signboards and organize public meetings. The Special Representative stresses the importance of translating both the spirit and the letter of the directive into action by authorities at the local level.

22. Interventions have been made by authorities in some of the cases of violence and intimidation. The Special Representative welcomes the Deputy Prime Minister's detailed account of complaints received and actions taken by the Central Security Office on several of the most serious instances of election-related violence.

23. On 30 June 2001 Uch Horn, a 52-year-old farmer and English teacher, was killed near his home in Baseth commune and district, Kompong Speu Province. Uch Horn was a prospective SRP candidate and had been a party trainer for several months prior to his death. Ten days before his death, he had erected a party signboard in front of his house. By that time Uch Horn

had reported to human rights organizations and local authorities concerns about his security. Two persons have been tried and convicted for the murder of Uch Horn. Arrests have been made, and investigations undertaken, in several other cases.

24. Meas Soy, a 57-year-old prospective FUNCINPEC candidate in Svay Chuk commune of Samaki Meanchey district, Kompong Chhnang Province, was killed in the evening of 17 July, the very day that he had invited party members to a meeting with the head of FUNCINPEC for Kompong Chhnang Province. In that case, and in the case of the 23 August killing of Touch Voeurn, prospective SRP candidate in Siem Reap, sufficient evidence for conviction was lacking and suspects were released in accordance with the law.

25. The Special Representative stresses the importance of article 127 of the Law on the Elections to the Commune/Sangkat Council, which stipulates that government officials must not carry out activities in support of a political party or its candidates. Accordingly, government officials should not use government resources - including human resources - for any activities on behalf of their political parties. Impartiality on the part of government authorities is necessary for a free and fair election process.

26. In his statement of 2 August 2001, the Special Representative raised concerns about government involvement in conducting opinion surveys on behalf of political parties. On 29 August 2001, local authorities gathered villagers from Tropeang Thom Cheung commune, Samrong district, Takeo Province, in order to recruit members for the CPP. During the ceremony villagers were asked to drink "oath water", swear loyalty to the CPP, as well as thumbprint CPP membership documents. The ceremony was attended by the Minister of Posts and Telecommunications and the Minister of Agriculture, Forestry and Fisheries, who distributed gifts to villagers.

27. Complaints have been submitted by election monitoring organizations to the Ministry of the Interior regarding the collection and recording of data from voter registration cards, which was being carried out by provincial authorities in the provinces Pursat, Battambang, Siem Reap, Kampot, Takeo, Kompong Speu and Svay Rieng. On 2 November 2001, the Co-Ministers of the Interior issued a directive to the governors of those provinces to investigate the confiscation of voter registration cards.

Visit to Chhouk district, Kampot Province

28. The Special Representative carried out a three-day visit to Kampot Province, where he focused primarily on the preparations for the election in Chhouk district. In Kampot town, the Special Representative met with provincial office staff of OHCHR/Cambodia, NGOs working in the area, the first and second deputy governors, the provincial police commissioner, the Chair of the PEC, as well as members of the four political parties registered to participate in the communal elections in Kampot.

29. In the period from 1 June to 31 October 2001, OHCHR/Cambodia confirmed 17 cases of election-related violence and intimidation as political or likely to be political in Kampot Province. Most cases involved threats, harassment and intimidation, but there were also cases involving death threats, as well as interference with signboards, directed against FUNCINPEC

and the SRP. Twelve of the cases had occurred in the area of Koh Sla, a former Khmer Rouge stronghold in Chhouk district comprising Ta Ken and Tropaing Plaing communes, prompting the Special Representative's visit to the area. A number of reports of threats and intimidation in the province, mainly in Chhouk district, were brought to the attention of local government, police and elections officials. The Special Representative looks forward to the findings of each of these offices on the cases raised and to their continued cooperation with OHCHR/Cambodia and its provincial office.

30. The Special Representative was favourably impressed by the work in Kampot of the PEC, which has undertaken to address individual cases in this particularly difficult area. Until only very recently, the area of Koh Sla was largely inaccessible even to authorities. Threats and intimidation are of particular concern in this context, where power at the local level has remained in the same hands for over 20 years.

31. In Ta Ken commune, the Special Representative met with the Chair and members of the CEC and the Chair and two members of the PEC. Voter education and election security issues were discussed. The Special Representative urged the two representatives to continue their cooperation in order to ensure peaceful elections.

32. In Tropaing Plaing commune, a meeting was held regarding the upcoming elections; participants included the CEC Chair for Tropaing Plaing, the PEC Chair for Kampot, the commune chief of Tropaing Plaing and his deputies, the deputies of the commune chief for Ta Ken, and members of CPP and FUNCINPEC, with SRP members arriving after the meeting had concluded. The meeting gave rise to a frank discussion on political intimidation and violence and the commitment of the various officials to prevent their occurrence and punish perpetrators. This unique meeting, which took place on the floor of a pagoda, afforded the participants a rare occasion to hear candidates and officials speak openly and offer their perspectives on recent events in the area. One participant, who had been unable to register as a voter, and therefore also as a candidate, addressed a complaint directly to the commune chief, in the presence of the PEC and CEC Chairs and the Special Representative.

33. The Special Representative found it constructive that all parties acknowledged the particular importance of pre-election cooperation in view of the likelihood that they would be required to work together on the Commune Councils after 3 February 2002. It is an encouraging sign of progress towards democracy that a meeting was possible in the former Khmer Rouge area of Koh Sla, and that it gave rise to a frank and peaceful discussion.

34. Following several visits to the area by members of the PEC, NEC and human rights organizations, as well as that of the Special Representative, the situation in Koh Sla appears to have improved. The number of allegations of election-related violence and intimidation had decreased at the time of writing of this report.

Post-election

35. The Special Representative believes that all monitoring efforts must extend beyond 3 February 2002 to ensure that power is transferred peacefully.

36. In the post-election context, many administrative duties at the commune level, including the registration of births, deaths and marriages, will be carried out by commune clerks. It is encouraging to note that these new public servants were recruited by examination. It is hoped that they will make a positive contribution to the efficient administration of the communes and to the further democratization of Cambodia.

B. Judicial reform

37. A properly functioning, independent and impartial judiciary is an essential element of any democratic State based on the rule of law and separation of powers; it also plays a key role in the guarantee of human rights. One of these is the right to a fair trial, which holds a prominent place in any democratic society. It is enshrined in democratic constitutions and in international human rights instruments, for example the International Covenant on Civil and Political Rights (art. 14).

38. Despite numerous, and in some cases voluminous, plans, reports and strategies, as well as institutions, dealing with judicial reform in Cambodia, there is little to report in terms of implementation or progress in this area. At last year's meeting of the Consultative Group in Tokyo, donor countries expressed their concern about the lack of action in the area of judicial reform.

39. In the light of mixed signals coming from the Government on judicial reform, the Special Representative was particularly interested in determining the level of political will to effect reforms. In that connection, he received assurances from the Prime Minister that judicial reform remains a high priority for the Royal Government of Cambodia; the Prime Minister also agreed with the Special Representative's assessment that the reform process has been too slow and must speed up. The Prime Minister further emphasized the importance of adopting the Statute of Judges and of increasing judges' salaries.

Prioritization of legislation

40. While judicial reform is a substantial task with many aspects requiring change and action, the Special Representative believes that the clearest sign of official commitment to judicial reform would be the immediate passing of the draft Statute of Judges into law. This important piece of legislation sets out the terms and conditions for employment of judges and prosecutors, and without it there can be no effective judicial reform.

41. In addition, the swift enactment of other important pieces of legislation would further improve Cambodia's legal and judicial systems. These laws include: the Anti-Corruption Law, the Penal Code, the Code of Criminal Procedure, the Civil Code and the Code of Civil Procedure.

Resources for the judiciary

42. The justice sector of the Government of Cambodia currently receives around 0.3 to 0.5 per cent of the national budget. This already inadequate amount is

often not even fully paid to the Ministry of Justice and the courts. When other ministries overspend their allocated budgets, funds are diverted from the budget of the Ministry of Justice to compensate.

43. Courts are often forced to borrow money locally, sometimes relying on the governor's office, in order to pay for such necessities as electricity. These arrangements can seriously compromise the independence of the courts. Another adverse effect of such meagre resources is that courts are unable to properly maintain their buildings and offices, leaving Cambodia's courts in disgraceful condition. The lack of resources also hampers the ability of prosecutors and investigating judges to investigate complaints adequately.

44. The Special Representative remains convinced that the independence of the judiciary would be advanced if the courts received adequate and autonomous budgets with which to operate and adequately pay judges and prosecutors.

Infrastructure and support services

45. The conditions of Cambodian courts are very poor; in many cases the court buildings are dilapidated and close to collapse. There is also a lack of courtrooms for the hearing of cases. Often, there are judges and prosecutors available to hear cases, but no courtrooms to accommodate them. If the simple task of building courtrooms were undertaken, delays in hearing cases could be greatly reduced.

46. Support services for the judicial system, such as police and forensic investigation, require training. In many cases, inadequate or improperly conducted investigations by police and the inability of medical services to provide the necessary evidence of injury cause delays and sometimes injustices in the judicial system.

47. Delays and injustices are also caused by the failure of the Prisons Department of the Ministry of the Interior to transport prisoners from Prey Sor Prison to a Phnom Penh courtroom. This problem also arises in the failure to transport appellants from the provinces to the Appeal or Supreme Courts in Phnom Penh. In many cases, hearings are nevertheless conducted in the absence of the accused person. The Ministry of the Interior must support the work of the courts and the proper administration of justice by transporting prisoners to court for their hearings.

48. Another practical means of improving the administration of justice in Cambodia would be to establish a proper Office of the Bailiff, which would ensure the effective enforcement of judgements.

Independence of the judiciary

49. The principle of the independence of the judiciary is enshrined in Cambodia's Constitution, as well as in the International Covenant on Civil and Political Rights, to which Cambodia is a party.

50. As stated in earlier reports, Cambodia's judiciary often shows signs of being neither impartial nor independent. Security remains a concern for judges: in August 2001 in Kampong Chhnang, the court refused to comply with an instruction from the Governor's Office. The court's refusal led to the organization of a public demonstration against the court; this intimidation ultimately resulted in the court's compliance with the Governor's instruction.

51. Interference with the judiciary is evident in the continued existence of circulars previously issued by the Ministry of Justice, which instruct judges on their decisions and sentences. Interference has also taken place with respect to the execution of judgements. The newly appointed Minister of Justice requested information from OHCHR/Cambodia regarding existing circulars, and stated that he would investigate the matter. The Minister also offered assurances that he would interfere neither with judgements - either directly or through the issuance of circulars - nor with the execution of judgements. The Special Representative welcomes these commitments by the Minister and it is hoped that he will direct all Justice Ministry officials accordingly.

52. The politicization of the judiciary remains an area of concern. In conflict with constitutionally and internationally recognized principles of judicial independence and impartiality, many of Cambodia's judges are openly aligned with political parties. One encouraging indication of a move toward depoliticization arose in terms of the recent appointment of 29 new judges; the Special Representative was told that the appointing body, the Supreme Council of the Magistracy, was not aware of, and therefore did not consider, the political affiliation of candidates.

Supreme Council of the Magistracy

53. The mandate of the Supreme Council of the Magistracy (SCM) is to safeguard the independence of the judiciary. However, as with the judiciary, there is concern about the politicized character of the SCM and its members. The functions of the SCM could be carried out more effectively if its members were, and were seen to be, independent and impartial.

54. While the SCM has begun to take a more active role in the judicial system, there is concern that its lack of independence is resulting in the punishment of members of the judiciary for failing to comply with illegal directives. At the same time, allegations of corruption continue to go unpunished by the SCM.

55. In order to fulfil more effectively its crucial role as guardian of the independence of Cambodia's judiciary, the SCM must be reformed, particularly in terms of depoliticization. The efficient functioning of the SCM would also be improved through the establishment of a permanent and independent secretariat.

School for magistrates

56. The proposed school for magistrates will provide Cambodia's judicial system with new and better-educated lawyers to function as judges and prosecutors. The school is a joint project of the Royal Government of Cambodia and the Government of France. The French judge charged with overseeing the project assured the Special Representative that the school would be

open and operational by 1 October 2002. However, the Royal Government of Cambodia has yet to issue the necessary decree for the establishment of the school. The Special Representative wishes to underscore to the Royal Government of Cambodia the importance of issuing this decree, as it represents both a step towards improving Cambodia's judiciary and a further sign of the Government's commitment to judicial reform.

57. Once the decree is issued and the new institution established, there remains the important task of selecting a director for the school. Great care must be taken to appoint a competent and independent director in order to ensure the proper functioning of the school.

58. The Special Representative also highlights the importance of admitting for training all qualified lawyers in order to ensure the highest quality of judges and prosecutors for the country. The school could also play an important role with regard to the continuing education of currently serving judges.

59. The school for magistrates is a serious and necessary undertaking and is an area in which donor support could produce tangible advances in judicial reform.

Lack of lawyers

60. The lack of lawyers in Cambodia is a critical issue affecting judicial reform. It is estimated that there is one lawyer for every 50,000 Cambodians. Many persons appear before the courts without legal representation and without having had access to lawyers prior to police interviews. In addition, most of Cambodia's practising lawyers are concentrated in Phnom Penh and are therefore inaccessible to inhabitants of remote and rural areas.

61. Cambodia now has almost 1,000 law graduates, many of whom have tried unsuccessfully to gain access to the Cambodian Bar Association (CBA). The Law of the Bar currently provides two avenues for admission to the Bar. Article 31 sets out the requirement of professional training in a school for lawyers; however, the passing of the requisite subdecree establishing this institution was subject to lengthy delay. The Special Representative welcomes the passing by the Royal Government of Cambodia on 14 September 2001 of the Subdecree on the "Creation of a Professional Lawyer Training Centre in Cambodia". However, the Cambodian Bar Association has shown some reluctance with regard to its implementation. After a series of meetings with the President of the CBA as well as the Bar Council, the Special Representative was assured that the training school for lawyers would be operational in September 2002.

62. As with the school for magistrates, the training school for lawyers must operate transparently and must be open to the largest number of students possible.

63. Access to the Bar may, alternatively, be obtained under article 32, which provides that law graduates with at least two years' practical legal experience may qualify for admission. Regrettably, the CBA has adopted a very restrictive interpretation of this article, admitting only those who have worked in public institutions. In that connection, the Special Representative met with the Working Group on the Shortage of Lawyers in Cambodia, which seeks to address the limited access to the Bar for recent law graduates with relevant work experience in non-governmental or private organizations. Under the CBA's restrictive interpretation of

article 32, even those with experience in Cambodia's legal aid NGOs do not qualify for admission. Many more law graduates are unable to find legally related work and must earn their livings as waiters or taxi drivers.

64. There is concern that the Bar Council may be considering the repeal of article 32, which would have the negative effect of further restricting access to the Bar. The Special Representative believes that improvement of the legal profession depends significantly on the opening up of access to the Bar and he strongly urges the Bar Council to maintain article 32 and recommends that it should be interpreted according to its plain and obvious meaning.

65. While the Law of the Bar provides some recourse for applicants who are refused, in some cases, the Bar Association has refused even to accept applications, effectively denying applicants the appeal procedures available under the Law. Through its prohibitive policies, the Bar Association appears to be operating a "closed shop".

66. The Special Representative believes that the admission of new, well-trained law graduates into the practice would be an effective, practical step towards the improvement of the judicial system. Not to admit them amounts to a shameful waste of human resources, particularly when Cambodia's population requires many more lawyers to serve it properly. The Special Representative raised this issue during his audience with the King, who agreed that the matter required action. In a letter to the Minister of Justice, the Supreme Council of the Magistracy and the Prime Minister, the King expressed his support for the opening up of the Bar and the judiciary and urged them to do everything possible to allow young graduates to pursue employment suitable to their education, and thus best serve Cambodia and Cambodians.

Juvenile justice system

67. On his previous visits to Cambodia, the Special Representative noted the dire situation of children in Cambodia's prison system. Whether in pre-trial detention, convicted, or living with their imprisoned mothers, these young people are potentially attending a school for crime while incarcerated. Efforts need to be taken immediately to ensure that juveniles are treated in accordance with the Convention on the Rights of the Child, to which Cambodia is a party, and other international instruments affecting the rights of children within the justice system.

68. The Prime Minister agreed with the Special Representative that Cambodia urgently needs a juvenile justice system. This need is becoming increasingly acute as the number of children coming into contact with the justice system and being detained and imprisoned is on the rise.

The role of the donor community

69. Donors play, and must continue to play, an important role in providing assistance to the Royal Government of Cambodia in the area of judicial reform. This support has generally taken the form of technical assistance, but more consideration should be given to providing related material support.

70. The Special Representative encourages, in particular, the continued support of NGOs working in the judicial field. These NGOs are over-extended in their provision of legal aid in a country where the vast majority of the population is unable to pay for legal services.

71. The Special Representative also wishes to underscore the importance of improved coordination among donors in the area of judicial reform. Such coordination and cooperation not only prevents duplication of aid, but also helps to identify areas that are not receiving adequate assistance.

C. The administration of justice: follow-up

72. During his fourth visit to Cambodia, the Special Representative also sought follow-up information on particular cases in relation to the administration of justice.

Pre-trial detention of CFF suspects

73. In earlier reports, the Special Representative raised concerns about due process and the so-called Cambodian Freedom Fighters (CFF) group. The first arrests of CFF suspects took place in November 2000 and subsequent arrests have been made up until the time of writing.

74. Two trials have already taken place, both of which contained similar errors and irregularities of procedure. In particular, many detainees were held in excess of six months, the legal limit for pre-trial detention. In addition, access to detainees by their families and lawyers has been restricted and subject to special procedures. If families are not able to visit the detainees, the detainees often do not receive sufficient food. Several of the suspected CFF detainees reportedly suffer from various illnesses - some grave - resulting from malnutrition and vitamin deficiencies. Restricted access to lawyers precludes the detainees' right to legal counsel and to an adequate defence. The Deputy Prime Minister and Co-Minister of the Interior assured the Special Representative that henceforth, access to detainees by family and lawyers will not be subject to any special measures and will be granted according to the law.

75. There is concern that the arrests of some of the CFF suspects arrested since September 2001were carried out without warrants. The Special Representative has raised this concern with the Deputy Prime Minister and Co-Minister of the Interior, and welcomes any clarification regarding these recent arrests.

Impunity

76. The Special Representative remains concerned about the continuing problem of impunity in relation to mob killings. While some perpetrators have been brought to justice, many more continue to go unpunished. Although the number of mob killings has decreased in 2001, such instances do, and will continue to occur unless perpetrators are held accountable. Aside from one conviction in absentia by the Svay Rieng court on 6 November 2001, the Special Representative is not aware of any other cases where perpetrators of mob violence have been brought to justice.

77. A mob killing was reported on the last day of the Special Representative's visit. The occurrence of mob killings is a clear indication of lawlessness and impunity in Cambodia, and the Special Representative urges the Royal Government of Cambodia and relevant officials to give an equally clear indication that such incidents are unacceptable and will be punished. These cases must be seriously and swiftly investigated and those responsible must be brought to justice.

Land issues

78. The plethora of cases of unlawful confiscation of land continues to be of concern. During his fourth visit, the Special Representative sought updates on several land dispute cases that he had raised with the Prime Minister during his third visit in June and in his letter of 26 July 2001 to the Prime Minister.

79. The Special Representative requested that the Royal Government of Cambodia assist the hundreds of families who had been relocated from Psa Ra in Poipet town to mine-infested and undeveloped land in the village of O'Neang in June 2000. The Royal Government of Cambodia denied that the relocation area was in fact mined and continues to deny that to this day.

80. The Special Representative visited the site in June 2001 and personally observed demining activities, which were subsequently confirmed by written reports from the Cambodian Mine Action Centre (CMAC). In the light of the Special Representative's own visit last June and reports of CMAC, it is clear that the people from Psa Ra were in fact relocated to undeveloped, mined land. CMAC was still demining the area at the time of writing of this report; it reported 70 mines and unexploded ordinance found from December 2000 until 3 July 2001.

81. The Royal Government of Cambodia is constitutionally bound to recognize and respect the rights protected by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The right to an adequate standard of living, including adequate housing and living conditions, is one such right. The relocation of poor people to undeveloped, mined areas where they are unable to maintain an adequate standard of living is a denial of their basic human rights.

D. Right to education

82. As part of his global approach to human rights, the Special Representative looks at economic, social and cultural rights along with civil and political rights. The right to education is an essential and central right; it is closely linked to the exercise of all other rights, civil and political as well as economic, social and cultural. Cambodia has a very young population; over 40 per cent of its people are under the age of 15. The future of the country lies very much in the education of its children.

83. His fourth visit to Cambodia afforded the Special Representative the opportunity of a preliminary investigation of the situation of education in Cambodia, with a view to undertaking a broader investigation and engage in dialogue with the Government on the occasion of his fifth

visit. The Special Representative consulted with national and international NGOs working in the field of education, as well as with the representatives of the United Nations Educational, Scientific and Cultural Organization and the United Nations Children's Fund which are the leading United Nations agencies on education.

84. As noted in the Special Representative's earlier reports, Cambodia's most urgent problems are further complicated by their interrelatedness. This is certainly the case with education. The Cambodian Constitution guarantees free primary and secondary education to all citizens in public schools. Nevertheless, extra fees for schooling are often requested. Many children are unable to pay for schooling, or must stop schooling in order to help their families subsist; an estimated 400,000 children between 6 and 11 years do not attend school. Poverty is the cause and the effect of the dire situation of education in Cambodia today.

85. Cambodia's Constitution enshrines the principles of the Convention on the Rights of the Child and has many provisions on the right to education; but nowhere in the Constitution is primary education defined as compulsory. Moreover, as in so many other cases, the requisite legislation to implement the constitutional provisions is lacking, thus making enforcement of these obligations difficult if not impossible.

Economics and accessibility

86. The Royal Government of Cambodia has taken important measures to alleviate the financial burden on parents sending their children to school. On 3 July 2001 the Ministry of Education issued circular No. 1820 repealing entrance fees for primary and lower secondary school students. This measure should address the problem of the extra fees that are often requested of parents to repair buildings and pay for electricity. It is estimated that these costs can reach up to US$ 25 per year, an amount that is prohibitively high for many poor families, who must also pay for books and uniforms. The Special Representative welcomes this action and encourages the Ministry to monitor vigorously the full implementation of the circular.

87. There remains concern, however, about the daily fees that students are expected to pay to their teachers in order to receive instruction. These daily fees represent yet another obstacle to children's enjoying their right to education, particularly in the case of very poor families. There is further concern that children may be learning at a very young age and in what should be a positive and encouraging environment that even basic rights come at a price.

88. The Special Representative commends the Royal Government of Cambodia for increasing the budget allocation for the Ministry of Education to 18.2 per cent, almost double the allocation for 1999/2000. It is hoped that these increased funds will find their way to the most needy areas within the education sector.

89. In particular, there is an urgent need to address the problem of teachers' salaries, currently estimated to be around US$ 20 a month. Increased salaries could greatly reduce the need for teachers to charge daily fees. Increased salaries would also attract more teachers, as well as former teachers, to the profession.

90. The increased budget should also be used to fund the building of much-needed classrooms and schools. In primary and secondary schools, one may find between 40 and 45 students per classroom, and the problem is more serious in remote areas where there are even fewer classrooms and teachers.

91. Teacher training is also a priority. Cambodia's commitment to providing education for all must be a commitment to quality education, as acknowledged in the Government's Education Sector Support Plan.

Discrimination and accessibility

92. The Special Representative is particularly concerned about the problem of discrimination as it relates to access to education, on such grounds as gender, geography, ethnicity, disability and wealth.

93. Gender. Ministry of Education research indicates that girls' enrolment in school decreases significantly in relation to school level; while girls represent 49.6 per cent of students enrolled in pre-school, only 31.8 per cent of students enrolled in upper secondary school are girls.

94. Geographical/physical discrimination. In 1999/2000, there was no enrolment for upper secondary school in Oddar Meanchey Province and limited enrolment in Mondulkiri, Pailin and Ratanakiri Provinces. Students in remote areas have particular difficulty in exercising their right to education. In some provinces, even where there are schools, students are unable to reach them because there are either no roads, or the roads are in very bad condition; most children must walk to school. Very young children, often suffering from malnutrition, are simply unable to make the trip, sometimes a distance of 3 km, and therefore do not begin their education until the age of eight or nine.

95. Ethnic minorities. There is significant evidence that language and ethnicity, particularly for indigenous children, is a barrier to education. Classes are offered in Khmer despite the fact that most children of ethnic minorities, especially Vietnamese, and of indigenous peoples do not speak Khmer. Private schools have been established to serve the needs of some linguistic minorities, but these are often costly and are mainly concentrated in Phnom Penh.

96. Disabled children. Estimates from NGOs indicate that there are about 260,000 children with disabilities for whom educational opportunities are limited and for whom specialized education is not available.

Steps towards reform

97. The Special Representative was pleased to learn that education is an area in which much government effort has been met with enthusiastic and coordinated support from the donor community. He encourages the continuation and strengthening of such collaborative efforts, in particular the Government's spirit of cooperation with international and national organizations specializing in education.

98. The Special Representative welcomes the Royal Government of Cambodia's Education Sector Support Programme for 2001-2005 and encourages the Government to take all necessary actions to pursue its full implementation. This will be a formidable task, and the Special Representative stresses, in particular, the importance of improving access to education by those groups who have been traditionally marginalized, such as girls, ethnic minorities, indigenous peoples, inhabitants of remote areas and the poor.

99. The Special Representative also welcomes the continued efforts of the Education Management Information System (EMIS) Statistical Centre of the Ministry of Education, Youth and Sports in providing reliable data on education in Cambodia. These data should be disaggregated with regard to the situation of national, ethnic and religious minorities, in order to facilitate assessment and monitoring of access to education for these groups.

E. Other issues

Special tribunal to try those responsible for crimes committed during the Democratic Kampuchea regime

100. The law establishing the Extraordinary Chamber has been approved by all competent Cambodian authorities and has been signed by His Majesty, King Norodom Sihanouk. An official translation has been transmitted to and is being examined by the Legal Counsel of the United Nations. The Special Representative expresses his hope that an agreement will be concluded in the near future between the United Nations and the Royal Government of Cambodia so that the work of the tribunal can begin expeditiously.

Memorandum of understanding

101. The memorandum of understanding (MOU) sets out the conditions of cooperation between the Royal Government of Cambodia and the Office of the High Commissioner for Human Rights. The Cambodia Office of the High Commissioner for Human Rights has been operating without the benefit of the MOU for nearly two years now, and its work will continue unimpeded without it. However, signing the MOU would be a strong and clear sign from the Royal Government of Cambodia of its full cooperation with and commitment to improving the human rights situation of all Cambodians.

102. The Special Representative discussed the MOU with the Minister for Foreign Affairs. An agreement was reached on the text and on the one outstanding provision concerning the freedom of expression of participants in OHCHR/Cambodia programmes and meetings. However, at the time of writing it had unfortunately still not been signed.

III. RECOMMENDATIONS

103. The Special Representative once again commends the international community for its continued interest in and support of Cambodia, one of the world's poorest countries. It is hoped that the tragic events of September 2001 will not detract from attention to the country's urgent needs. The Special Representative strongly encourages donor countries to follow through on their pledged assistance and stresses that the protection and promotion of human rights should be

taken into account in all assistance programmes. The Special Representative wishes to point to the crucial importance of increased cooperation amongst donor countries for two important reasons: first, to avoid duplication of assistance and second, to determine and address efficiently areas where assistance is lacking.

104. For its part, the Government of Cambodia should recognize that the donor community is increasingly eager to see concrete results from government reform programmes and that these results will determine the degree of support in the future.

Communal elections

105. The February Commune Council elections represent a further step towards the consolidation of democracy in Cambodia and will serve as an important indicator with respect to the general election planned for 2003. In light of this, the Special Representative offers the following recommendations.

106. In the pre-election context, the Special Representative urges the effective enforcement of the criminal provisions aimed at addressing wrongful conduct that might alter the outcome of the elections.

107. The Special Representative recommends that firm measures be taken to ensure separation between State and party; in particular, the practice of using State resources for political campaign purposes must end.

108. Relevant authorities are called upon urgently and seriously to investigate all allegations of violence and intimidation against members of political parties and bring those responsible to justice.

109. The Special Representative strongly encourages the Royal Government of Cambodia to continue to convey a clear message to all relevant authorities and the public that violence and intimidation against members of political parties will not be tolerated before, during or after the Commune Council election period and leading up to the National Assembly elections in 2003.

110. The Special Representative believes that a truly independent National Election Committee should be established and allowed to administer elections free of any undue influence, interference or intimidation.

111. The Special Representative stresses the importance of equal media access for all political parties in the carrying out of free and fair democratic elections.

Judicial reform

112. The Special Representative strongly believes judicial reform will advance through the achievement of small, concrete steps. One such step would be the immediate enactment of the draft Statute of Judges into law. This piece of legislation sets out the terms and conditions of employment of judges and prosecutors and, among other things, determines the age and terms of retirement.

113. The Special Representative believes that a further concrete step would be the immediate introduction into the Bar and the judiciary of young, trained law graduates, some of whom already have practical legal experience. The school for the magistracy and the training school for lawyers, both expected to be operational in the fall of 2002, will provide new and current judges and lawyers with much needed professional training and will be a tangible step towards reform.

114. The Special Representative urges the Cambodian Bar Association to continue to allow access to the Bar through operation of article 32 of the Law of the Bar. It is also recommended that the interpretation of article 32 be reviewed so that it is read according to its plain and obvious meaning.

115. The Special Representative recommends that the Minister of Justice withdraw all circulars previously issued to judges and prosecutors which interfere with their independence. Furthermore, with a view to creating a climate where respect for the independence of the judiciary is paramount, the Special Representative urges the Minister of Justice and the Ministers of the Interior to take all necessary measures to ensure that government officials of all ranks do not interfere with the execution of judgements.

116. The Special Representative reiterates his recommendation that the Supreme Council of the Magistracy undergo urgent reform to ensure its independence from political interference. In particular, some distance between members of the SCM and political parties should be observed.

117. The Special Representative welcomes the continuing efforts of the Ministry of the Interior in training judicial police to undertake thorough investigation and documentation of cases. The Special Representative appeals to the Ministry of the Interior to make all necessary efforts to ensure that detainees are transported to court hearings and to ensure that the right of these persons to be present and to defend themselves at trial is respected.

118. The Special Representative is encouraged by the agreement of the Prime Minister that there is a need to establish a juvenile justice system and hopes that steps will be taken by the Royal Government of Cambodia to ensure that the rights of Cambodian children involved with the justice system are respected and protected.

119. The Special Representative strongly urges the Royal Government of Cambodia to increase the meagre budgetary allocation to the justice sector. An increased budget would facilitate and improve the operation of the courts, the Office of the Prosecutor and the administration of justice.

120. The Special Representative commends the support of donors with respect to judicial reform and encourages them to further coordinate and share information about their support for the Royal Government of Cambodia in this area.

Education

121. Analysis of the right and access to education in Cambodia must acknowledge the interrelationship of this right with issues of poverty and discrimination. With a view to

addressing in greater depth the complexities of education in Cambodia on his next visit, the Special Representative offers the following preliminary recommendations to the Royal Government of Cambodia and those who support it.

122. The Special Representative urges international donors to continue their support of the efforts of the Royal Government of Cambodia to respond to the needs of the population, in particular the effort to achieve compulsory, free primary education for all. The Special Representative commends and encourages cooperation amongst donors and between donors and the Royal Government of Cambodia.

123. The Special Representative believes that an important step in improving the situation of education in Cambodia is through the increase of teachers' salaries to a decent living wage, with a view to improving their motivation and dedication to their task.

124. The Special Representative welcomes the repeal by the Ministry of Education of entrance fees for primary and lower secondary school students and encourages the Royal Government of Cambodia to monitor the full implementation of this effort. Similar efforts with regard to the imposition of daily fees would also be welcome.

125. The Special Representative also welcomes the Government's Education Sector Support Programme (ESSP) for 2001-2005, and appeals to the Government to take all necessary steps to ensure the full implementation of the ESSP. Particular attention should be paid to the improvement of access to education for traditionally marginalized groups such as girls, ethnic minorities, indigenous peoples, inhabitants of remote areas and the poor.

126. The Special Representative recommends that the Education Management Information System (EMIS) Statistical Centre of the Ministry of Education, Youth and Sports continue its efforts to provide reliable, up-to-date statistics on education in Cambodia. These data should be disaggregated with regard to the situation of marginalized groups (other than girls) to facilitate accurate assessment and monitoring of their access to education.